

is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

(3) *Review.* If the Regional Administrator determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

[61 FR 34968, July 3, 1996, as amended at 68 FR 69973, Dec. 16, 2003; 70 FR 2026, Jan. 12, 2005]

EFFECTIVE DATE NOTE: At 76 FR 60622, Sept. 29, 2011, § 648.70 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.70 Surfclam and ocean quahog Annual Catch Limit (ACL).

(a) The MAFMC staff shall recommend to the MAFMC ACLs for the surfclam and ocean quahog fisheries, which shall be equal to the ABCs recommended by the SSC.

(1) *Sectors.* The surfclam and ocean quahog ACLs will be established consistent with the guidelines contained in the Atlantic Surfclam and Ocean Quahog FMP. The ACL for ocean quahog will then be allocated to the Maine and non-Maine components of the fishery according to the allocation guide-

lines of the Atlantic Surfclam and Ocean Quahog FMP as specified in § 648.78(b).

(2) *Periodicity.* The surfclam and ocean quahog ACLs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The MAFMC staff shall conduct a detailed review of the fishery performance relative to the ACLs at least every 5 years.

(1) If the surfclam or the ocean quahog ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the MAFMC staff will review fishery performance information and make recommendations to the MAFMC for changes in measures intended to ensure the ACL is not exceeded as frequently.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following a determination that a stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

§ 648.71 Catch quotas.

(a) *Establishing quotas.* Beginning in 2005, the amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for a 3-year period by the Regional Administrator. The initial 3-year specification will be based on the most recent available survey and stock assessments for Atlantic surfclams and ocean quahogs. Subsequent 3-year specifications of the annual quotas will be accomplished in the third year of the quota period, unless the quotas are modified in the interim pursuant to § 648.71(b). The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 m bu (98.5 to 181 m L) per year. The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 m bu (213 to 319.4 m L).

(1) *Quota reports.* On an annual basis, MAFMC staff will produce an Atlantic surfclam and ocean quahog annual quota recommendation paper to the MAFMC based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as

well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a 3-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

- (i) Exploitable and spawning biomass relative to the OY.
- (ii) Fishing mortality rates relative to the OY.
- (iii) Magnitude of incoming recruitment.
- (iv) Projected effort and corresponding catches.
- (v) Geographical distribution of the catch relative to the geographical distribution of the resource.
- (vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review.* Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the FEDERAL REGISTER. Comments on the proposed annual quotas may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the FEDERAL REGISTER each year. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act and the objectives of the Atlantic Surfclam and Ocean Quahog FMP and other applicable law.

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may

recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the Council's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3-year period. Such modification shall be in effect for a period of 3 years from the year in which it is first implemented, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a 3-year period.

(c) *Annual quotas.* The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. NMFS will issue notification in the FEDERAL REGISTER if the previous year's specifications will not be changed.

[68 FR 69973, Dec. 16, 2003, as amended at 70 FR 2026, Jan. 12, 2005]

EFFECTIVE DATE NOTE: At 76 FR 60622, Sept. 29, 2011, § 648.71 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.71 Surfclam and ocean quahog Annual Catch Targets (ACT).

(a) The MAFMC staff shall identify and review the relevant sources of management uncertainty to recommend ACTs to the MAFMC as part of the surfclam and ocean quahog specification process. The MAFMC staff recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* The surfclam ACT and the sum of the Maine and non-Maine ocean quahog ACTs shall be less than or equal to the ACL for the corresponding stock. The MAFMC staff shall recommend any reduction in catch necessary to address management uncertainty, consistent with paragraph (a) of this section.

(2) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple year ABC recommendations.

(b) *Performance review.* The MAFMC staff shall conduct a detailed review of fishery performance relative to ACTs in conjunction

with any ACL performance review, as outlined in § 648.70(b)(1) through (3).

§ 648.72 Minimum surf clam size.

(a) *Minimum length.* The minimum length for surf clams is 4.75 inches (12.065 cm).

(b) *Determination of compliance.* No more than 50 surf clams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surf clams in any inspected cage of surf clams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(c) *Suspension.* Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the FEDERAL REGISTER, the minimum shell-height standard, unless discard, catch, and survey data indicate that 30 percent of the surf clams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell height is not attributable to beds where the growth of individual surf clams has been reduced because of density dependent factors.

(d) *Measurement.* Length is measured at the longest dimension of the surf clam shell.

EFFECTIVE DATE NOTE: At 76 FR 60622, Sept. 29, 2011, § 648.72 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas.* The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section. The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 million bu (98.5 to 181 million L). The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 million bu (213 to 319.4 million L). Quotas for surfclams and ocean quahogs may be specified below these ranges if the ABC recommendation of the SSC limits the ACL to a value less than the minimum of the range indicated.

(1) *Quota reports.* On an annual basis, MAFMC staff will produce and provide to the

MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for up to a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the OY.

(ii) Fishing mortality rates relative to the OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review.* Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the FEDERAL REGISTER. The Regional Administrator shall consider public comments received, determine the appropriate annual quotas, and publish the annual quotas in the FEDERAL REGISTER. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act or the objectives of the Atlantic Surfclam and Ocean Quahog FMP or other applicable law.

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the MAFMC's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3-year